From: LERS, EOIR (EOIR)
To: All of CLAD (EOIR); All of Judges (EOIR); All of OCIJ JLC (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Barry, Robert (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA ATTORNEYS (EOIR); BIA BOARD MEMBERS (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Calvert, Irvina (EOIR); Cardenas, Lupe (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Crossley, Maurice (EOIR); Cudo, Relanie (EOIR); Curry, Michelle (EOIR); D"Angelo, Matthew (EOIR); Evans, Brianna (EOIR); Friedman, Paul (EOIR); Gonzalez, Robert (EOIR); Grodin, Edward (EOIR); Hammond, Nicole (EOIR); Hartman, Alexander (EOIR); Hess, Chris (EOIR); Horowitz, Raechel (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Lang, Steven (EOIR); LERS, EOIR (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Mitchell, Carla (EOIR); Morteo, Cristina (EOIR); Noferi, Mark (EOIR); Nunez, Steven (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Podgorski, Monika (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Santoro, Christopher A (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc: McHenry, James (EOIR); Reilly, Katherine (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Alder Reid, Lauren (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Macri, Andrea (EOIR); Morgan, Kenosha (EOIR); Phung, Mai (EOIR); EOIR Library (EOIR)
Subject: Policy & Case Law Bulletin - December 7, 2018
Date: Friday, December 07, 2018 7:34:23 PM

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
December 7, 2018

Federal Agencies

DOJ

Acting Attorney General Directs the Board to Refer its Decision in Matter of Castillo-Perez to Him for Review — EOIR

27 I&N Dec. 495 (A.G. 2018)

The Acting Attorney General referred the decision of the Board of Immigration Appeals to himself for review of issues relating to the following questions: (1) In connection with an application for cancellation of removal under 8 U.S.C. § 1229b(b), what is the appropriate legal standard for determining when an individual lacks "good moral character" under 8 U.S.C. § 1101(f)?; (2) What impact should multiple convictions for driving while intoxicated or driving under the influence have in determining when an individual lacks "good moral character" under 8 U.S.C. § 1101(f)?; and (3) What impact should multiple such convictions have in determining whether to grant discretionary relief under 8 U.S.C. § 1229b(b)? The Board's decision is stayed pending the Acting Attorney General's review of the matter. He directed the parties to submit any briefs on or before January 4, 2019, and any reply briefs on or before January 18, 2019. He further invited interested amici to submit briefs on or before January 18, 2019.

Acting Attorney General Directs the Board to Refer its Decision in Matter of L-E-A- to Him for Review — EOIR

27 I&N Dec. 494 (A.G. 2018)

The Acting Attorney General referred the decision of the Board of Immigration Appeals to himself for

review of issues relating to whether, and under what circumstances, an alien may establish persecution on account of membership in a "particular social group" under 8 U.S.C. § 1101(a)(42)(A) based on the alien's membership in a family unit. The Board's decision is stayed pending the Acting Attorney General's review of the matter. He directed the parties to submit any briefs on or before January 4, 2019, and any reply briefs on or before January 18, 2019. He further invited interested amici to submit briefs on or before January 18, 2019.

Virtual Law Library Weekly Update — EOIR
This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

DHS Proposes Merit-Based Rule for More Effective and Efficient H-1B Visa Program
DHS published a notice in the Federal Register inviting comment on proposed rulemaking that would require petitioners seeking to file H-1B cap-subject petitions to first electronically register with USCIS during a designated registration period. Under the proposed rule, USCIS would also reverse the order by which USCIS selects H-1B petitions under the H-1B cap and the advanced degree exemption, likely increasing the number of beneficiaries with a master's or higher degree from a U.S. institution of higher education to be selected for an H-1B cap number, and introducing a more meritorious selection of beneficiaries.

DOS

DOS Updates 9 FAM
DOS made updates to section 402.13 (aliens of extraordinary ability O visas) to revise O Visa DHS and DOS procedural and processing guidance; sections 307.2(U) (definitions), 307.4(U) (supervisory duties), and 307.5(U) (documenting visa lookout accountability (VLA) violations) to clarify Visa Lookout Accountability requirements to reduce possible ambiguities; and 602.2(U) (working with other parts of United States government) to clarify changes in responsibilities for fingerprinting USCIS applicants.

Supreme Court

CERT. DENIED

Lara-Aguilar v. Whitaker
No. 18-6136, 2018 U.S. LEXIS 7133 (Dec. 3, 2018)
Question(s) presented are not available at this time.

Fourth Circuit

Mauricio-Vasquez v. Whitaker

No. 17-2209, 2018 WL 6378297 (4th Cir. Dec. 6, 2018) (Burden of Proof; Admission)

The Fourth Circuit granted the PFR, holding that Mauricio-Vasquez is not removable under INA § 237(a)(2)(A)(i) for having been convicted of a crime involving moral turpitude committed within five years after his date of admission. Based on the unrebutted evidence in the record, the court determined that DHS failed to prove by clear and convincing evidence that Mauricio-Vasquez's date of admission was in 2008, less than five years before he committed Virginia felony abduction in 2012. In declining to give DHS a "third bite at the apple," the court vacated the removal order and remanded to the agency with instructions to grant Mauricio-Vasquez's motion to terminate removal proceedings.

Tairou v. Whitaker

No. 17-1404, 2018 WL 6252780 (4th Cir. Nov. 30, 2018) (Asylum)

The Fourth Circuit granted the PFR and remanded the case to the BIA to determine whether DHS can rebut the presumption that Tairou has a well-founded fear of future persecution on account of membership in a particular social group defined as "homosexuals in Benin." The court determined that the BIA erred by finding that Tairou had not established past persecution, despite his credible testimony of multiple death threats he received in Benin. Because Tairou proved that he suffered past persecution, the court determined that he was entitled to a rebuttable presumption of a well-founded fear of future persecution.

Fifth Circuit

United States v. Reyes-Contreras

No. 16-41218, 2018 WL 6253909 (5th Cir. Nov. 30, 2018) (en banc) (Crime of Violence)

The Fifth Circuit affirmed the district court's decision, holding that Reyes-Contreras's conviction of voluntary manslaughter under Missouri Revised Statutes § 565.023.1 is a crime of violence ("COV"), generic manslaughter under U.S.S.G. § 2L1.2(b)(1)(A)(ii) (2015) (which has since been rewritten and no longer includes the reference to "a crime of violence"). The court determined that section 565.023.1 is divisible, and that under the modified categorical approach, Reyes-Contreras was convicted under Subdivision (1) (voluntary manslaughter). In the alternative, even if section 565.023.1 were not divisible, the court held that the statute as a whole is a COV because Subdivision (2) (assisting another in self-murder) satisfies the use-of-force requirement and thus is independently a COV. In finding "use of force" for purposes of identifying COVs, the court abolished the distinction between direct and indirect force, expressly overruling multiple prior precedent decisions.

Sixth Circuit

United States v. Veloz-Alonso

No. 18-3973, 2018 WL 6377717 (6th Cir. Dec. 6, 2018) (Detention)

The Sixth Circuit reversed the district court's order enjoining the government from detaining Veloz-Alonso pending sentencing, concluding that the Bail Reform Act (BRA) "presumes detention but allows for the permissive release of a criminal defendant. The INA mandates the detention of certain illegal aliens. Reading the BRA's permissive use of release to supersede the INA's mandatory detention does not follow logically nor would doing so be congruent with our canons of statutory interpretation. One of the primary purposes of the BRA is to ensure the appearance of criminal defendants at judicial proceedings. To the extent that ICE may fulfill its statutory mandates without impairing that purpose of the BRA, there is no statutory conflict and the district court may not enjoin the government's agents."

Eighth Circuit

Camacho v. Whitaker

No. 17-3713, 2018 WL 6358484 (8th Cir. Dec. 6, 2018) (Motions)

The Eighth Circuit denied the PFR, concluding that the BIA did not abuse its discretion in denying Camacho's motion for reconsideration. The court determined that the Board provided a rational explanation, which did not violate the clear error standard of review; properly rejected the IJ's suppositions about whether Comacho was factually innocent of the underlying criminal offense; and sufficiently considered the issues raised by Camacho.

Ninth Circuit

United States v. Sineneng-Smith

No. 15-10614, 2018 WL 6314287 (9th Cir. Dec. 4, 2018) (Bringing and Harboring Aliens)

The Ninth Circuit reversed, in part, the district court's decision, holding that 8 U.S.C. § 1324(a)(1)(A)(iv) is unconstitutionally overbroad. Subsection (iv) permits a felony prosecution of any person who "encourages or induces an alien to come to, enter, or reside in the United States" if the encourager knew, or recklessly disregarded "the fact that such coming to, entry, or residence is or will be in violation of law." Because no reasonable reading of the statute can exclude speech, the court determined that the statute criminalizes a substantial amount of constitutionally-protected expression in violation of the First Amendment.

Eleventh Circuit

Calixto v. Lesmes

No. 17-15364, 2018 WL 6257410 (11th Cir. Nov. 30, 2018) (Hague Convention)

The Eleventh Circuit remanded to the district court, holding that further factual findings are needed.

The decision involves an appeal from the district court's denial of a petition seeking the return of Calixto's 5-year-old daughter, M.A.Y., to Colombia, under the Hague Convention on the Civil Aspects of International Child Abduction, implemented in the United States through the International Child Abduction Remedies Act, 22 U.S.C. § 9001 et seq. The district court denied Calixto's petition for return, concluding that Lesmes's (the child's mother) retention of M.A.Y. in the United States was not wrongful under the Convention because Calixto and Lesmes had shared an intent to change M.A.Y.'s habitual residence from Colombia to the United States, and because M.A.Y.'s habitual residence had subsequently become the United States through acclimatization. However, because the district court did not address key questions relating to Calixto's intent to change M.A.Y.'s habitual residence, the court remanded to resolve significant conflicts in the evidence.